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SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. BOX 2938
MINNEAPOLIS MN 55402

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OFFICE OF PETITIONS

In re Patent No. 7,612,370 : DECISION ON REQUEST FOR
HANNAH et al. : RECONSIDERATION OF
Issue Date: 11/03/2009 : PATENT TERM ADJUSTMENT AND
Application No. 10/750,488 : NOTICE OF INTENT TO ISSUE
Filed: 12/31/2003 : CERTIFICATE OF CORRECTION
Attorney Docket No. P18191 :

This is a decision on the APPLICATION FOR POST ISSUE PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b), filed on May 20, 2010, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand four hundred seventy-five (1475) days.

The request for reconsideration of the patent term adjustment calculation is **DISMISSED**.

In the present petition, applicants assert the correct patent term adjustment is 1475 days, which they calculated as follows:

The date that is four months after the Issue Fee Payment was recorded/ verified on August 11, 2008 by USPTO is December 11, 2008. The Original Letters Patent was issued on November 3 2009. The difference between these two dates is 327 days credit to Applicants' patent term. The USPTO has failed to take into account these NON-OVERLAPPING Post-

Issue A-Delay of 327 days incurred as a result of late issuance of the Patent.

STATEMENT, 05/20/10, p. 1.

A review of the PALM calculations for this application reveals that the patent term adjustment at the time of the mailing of the notice of allowance was 112 days. Thereafter, applicant was assessed 2 days of delay pursuant to 37 CFR 1.704(b) for failing to respond to the Notice of Allowance and Fees Due within three months of its mailing date. Additionally, the Office was assessed 327 days of delay pursuant to 37 CFR 1.702(a)(4) for failing to issue the patent no later than four months after the date on which the issue fee was paid and all outstanding requirements were satisfied and 1038 days of delay pursuant to 37 CFR 1.702(b) for failing to issue the patent within three years of the actual filing date of the application. However, the record reveals that 327 days overlap between A Delay and B Delay, beginning on December 12, 2008, and ending on November 3, 2009. See 35 USC 154(b)(2)(A) and 37 CFR 1.137(f). Thus, the record shows that the revised determination includes the 327 days (albeit overlapping days) for Office delay in issuing the patent pursuant to 37 CFR 1.702(a)(4) in calculating the patent term adjustment of 1148 days indicated in the patent. Accordingly, an increase of the patent term adjustment to 1475 days is not warranted.

In view of thereof, the patent properly issued with a patent term adjustment of 1148 days (542 days of A delay + 1038 days of B delay - 327 days of overlap - 104 days of applicant delay).

The Office acknowledges the submission of the \$200.00 fee set forth in 37 CFR 1.18(e).

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions